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January 10, 2007

BY HAND

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5813

Dear Mr. Norton:

We write on behalf of our client, the Georgia Medical Political Action Committee, and its treasurer, Dr. Roy Vandiver ("GAMPAC"), in response to the Commission's November 9, 2006 letter finding reason to believe that GAMPAC violated the Federal Election Campaign Act ("FECA"). The Commission's finding is based upon the admitted embezzlement of GAMPAC funds by Stephanie Verden, a former employee of GAMPAC's connected organization, the Medical Association of Georgia ("MAG"). As voluntarily disclosed by GAMPAC to the Commission, the embezzlement caused GAMPAC to mis-report receipts. In its letter, the Commission attributes this to an alleged lack of sufficient internal controls.

Although the Commission is currently contemplating adopting a policy statement encouraging political committees to adopt internal controls to mitigate the risk of embezzlement, at the time Ms. Verden embezzled funds from GAMPAC the Commission had no regulations or policy statements requiring any particular regime of internal controls. Yet even in the absence of a regulatory requirement, GAMPAC did have controls in place. A lockbox was used to process many, although not all receipts. The employee who received and recorded incoming contribution checks on a receipts log was not the same employee whose responsibility it was to reconcile the receipts log with GAMPAC's bank statements -- a key element of the

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Commission's proposed "minimum internal controls." The embezzlement occurred notwithstanding these controls because of the willful illegal acts of Ms. Verden and the apparent failure of another employee to adhere to the internal control procedures by conducting rigorous reconciliations of the receipts log.

Given that GAMPAC had controls in place, that it uncovered the embezzlement on its own through an audit process, and that it voluntarily reported the embezzlement to the Commission and to other law enforcement authorities, the circumstances of this case weigh heavily in favor of taking no action against GAMPAC.

Background

As previously disclosed to the Commission by GAMPAC, Stephanie Verden, a manager of accounts for MAG, diverted checks delivered to MAG headquarters into a secret bank account. She had opened the account under MAG's name and assigned check writing authority to her own signature and the signature of a fictitious person. This account allowed her to divert funds for her own use without any record of their existence showing up on MAG's or GAMPAC's ordinary bank statements. Some, but not all, of the checks diverted by Ms. Verden were payable to GAMPAC.

At the time, as today, most GAMPAC checks were received into a bank "lockbox," a procedure that the Commission has encouraged. None of the checks received into the lockbox were embezzled. Some checks inevitably are delivered directly to MAG's headquarters by hand or through the mail, however, as will be the case with most if not all committees that use a lockbox. Verden had access to these checks, and it was these checks that she sometimes diverted into her secret account. Under the internal control process in place at the time, whoever collected the checks was required to enter them into a receipts log book that was kept at the front desk. The accounting supervisor, Kelly Cook, was to reconcile the log book with the bank accounts on a regular basis. It appears that this reconciliation either was not done, or was not done with sufficient regularity and rigor to detect the diversion of funds. When Ms. Cook left

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MAG, it appears that her replacement was not trained to reconcile the log book with the bank statements, and he did not do so.

GAMPAC eventually discovered the diversion of funds as part of a routine outside audit. The external auditors discovered that they could not reconcile three checks that had been hand delivered to GAMPAC and appeared in the log book but that did not show up on the organization's bank statements. GAMPAC began to inquire about the missing checks. On the Monday following the discovery, Ms. Verden declared that she had initially misplaced the checks, but had deposited them that morning. The bank statements showed that the missing money had been deposited, but did not indicate whether it was a cash or check deposit.

Upon learning that the deposited checks could not be identified and thus were probably cash deposits, an investigation of Ms. Verden was initiated, which ultimately led to her termination and successful criminal prosecution. After voluntarily consulting with the Reports Analysis Division, GAMPAC then amended its disclosure reports filed with the Commission to reflect the diverted contributions.

GAMPAC brought this matter to the Commission's attention voluntarily and also disclosed the diversion of funds to the Federal Bureau of Investigation. As the victim of Ms. Verden's crime, GAMPAC acted promptly to correct its own filings and to ensure that law enforcement authorities were informed of Ms. Verden's conduct.

Internal Controls Requirement

The Commission recently issued a proposed policy concerning internal controls intended to reduce the risk of embezzlement of political committee funds. Under the new policy, committees that adopt the suggested internal controls would not be subject to liability for acts of embezzlement by individuals that overcome the controls. GAMPAC is voluntarily adopting these suggested, minimum internal controls. Indeed, in key respects, the controls that existed at the time of the embezzlement by Ms. Verden were similar to the controls now advocated by the Commission. The proposed Commission policy calls for the following minimum controls:

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- All bank accounts opened in the name of the committee, not an individual.
- Checks over \$1,000 and wire transfers must be authorized by two individuals, who are identified in a written policy.
- An individual without banking authority and who does not handle the committee's accounting receives incoming checks, makes a list of receipts, and marks checks "For Deposit Only."
- Bank statements are reconciled each month to a list of receipts by someone who does not have check signing authority and does not handle the committee's accounting.
- Restrictions on petty cash.

At the time of the embezzlement, Verden managed to open an account not in her own name, but rather in MAG's name. Responsibility for logging receipts and reconciling the log book with the bank statements likewise did not reside in a single person. Receipts were to be logged by a receptionist, and the accounting director was to reconcile the log book with the bank statements. While the circumstances are not entirely clear, it appears that the accounting director likely failed to reconcile the log book on a regular basis. As the Commission itself has noted, "the best internal control system can provide only *reasonable*, not absolute, assurance. . . . Any system can be defeated either by accident or intentionally through collusion." See Proposed Internal Control Guidance for Political Committees, Agenda Document 06-68 (Oct. 16, 2006) at 2 (emphasis in original).

Following discovery of the embezzlement, GAMPAC took precisely the steps that the Commission now advocates in its proposed policy on embezzlements. The proposed policy requires that the committee (1) notify relevant law enforcement of the misappropriation, (2) notify the Commission of the misappropriation, and (3) voluntarily file amended reports to correct any reporting errors caused by the misappropriation. See "Minimum Safeguards to Prevent Misappropriation" (Oct. 16, 2006). These are precisely the steps that GAMPAC took on its own initiative after it discovered the embezzlement through an outside audit.

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In material respects, this case is different from the Commission's precedent in the Lockheed Martin embezzlement matter. In Lockheed Martin (MUR 5721), a single employee was responsible for tracking receipts, handling disbursements, and reconciling the bank statements. The committee's own auditors had advised that controls were insufficient and provided little protection from abuse, yet the committee took no steps to tighten controls. In sharp contrast, GAMPAC dispersed these duties among several personnel. Nor had GAMPAC received any instruction from auditors that a more robust system of controls was required. As soon as outside auditors did detect an anomaly, GAMPAC investigated. In these circumstances, it would not be a prudent application of the Commission's enforcement authority to penalize GAMPAC for the illegal acts of its now convicted former employee.

GAMPAC respectfully requests that the Commission take no action, or, in the alternative, authorize pre-probable cause conciliation. GAMPAC's responses to the Commission's interrogatories and document requests are enclosed. As noted therein, GAMPAC's review of electronic documents is continuing, and it will supplement its document production once that search is complete.

Respectfully submitted,



Robert K. Kelner